

JAN 25 2013

**Board of Vocational Nursing
and Psychiatric Technicians**

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
4 State Bar No. 101336
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3037
7 Facsimile: (619) 645-2061
Attorneys for Complainant
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9 **BEFORE THE**
10 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. VN-2010-3701

13 **LUCINA ODELL LANDA**
14 **1227 North Mollison Avenue, Apartment G**
El Cajon, CA 92021

A C C U S A T I O N

15 **Vocational Nurse License No. VN 234300**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, (Complainant) J.D., M.S.N., R.N. brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and
22 Psychiatric Technicians (Board), Department of Consumer Affairs.

23 2. On or about May 13, 2008, the Board issued Vocational Nurse License Number
24 VN 234300 (License) to Lucina Odell Landa (Respondent). Respondent has also been known as
25 Lucina Landa and Lucina O'Dell Landa. The License was in full force and effect at all times
26 relevant to the charges brought herein and will expire on September 30, 2013, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

5. Section 2875 of the Code provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction

1 is substantially related to the qualifications, functions, and duties of the licensee in
2 question.

3 As used in this section, "license" includes "certificate," "permit,"
4 "authority," and "registration."

5 9. Section 2878 of the Code states:

6 The Board may suspend or revoke a license issued under this chapter [the
7 Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for any of
8 the following:

9 (a) Unprofessional conduct, which includes, but is not limited to, the
10 following:

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12 (f) Conviction of a crime substantially related to the qualifications,
13 functions, and duties of a licensed vocational nurse, in which event the record of
14 the conviction shall be conclusive evidence of the conviction.

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16 10. Section 2878.5 of the Code states:

17 In addition to other acts constituting unprofessional conduct within the
18 meaning of this chapter, it is unprofessional conduct for a person licensed under
19 this chapter to do any of the following:

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21 (b) Use any controlled substance as defined in Division 10 of the Health
22 and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic
23 beverages, to an extent or in a manner dangerous or injurious to himself or
24 herself, any other person, or the public, or to the extent that the use impairs his or
25 her ability to conduct with safety to the public the practice authorized by his or
26 her license.

27 (c) Be convicted of a criminal offense involving possession of any
28 narcotic or dangerous drug, or the prescription, consumption, or self-
administration of any of the substances described in subdivisions (a) and (b) of
this section, in which event the record of the conviction is conclusive evidence
thereof.

. . . .

REGULATORY PROVISIONS

11. California Code of Regulations, title 16, (CCR) section 2521, states:

For the purposes of denial, suspension, or revocation of a license pursuant
to Division 1.5 (commencing with Section 475) of the Business and Professions
Code, a crime or act shall be considered to be substantially related to the
qualifications, functions or duties of a licensed vocational nurse if to a substantial
degree it evidences present or potential unfitness of a licensed vocational nurse to

1 perform the functions authorized by his license in a manner consistent with the
2 public health, safety, or welfare. Such crimes or acts shall include but not be
limited to those involving the following:

3 (a) Procuring a license by fraud, misrepresentation, or mistake.

4 (b) A conviction of practicing medicine without a license in violation of
Chapter 5 of Division 2 of the Business and Professions Code.

5 (c) Violating or attempting to violate, directly or indirectly, or assisting in
6 or abetting the violation of, or conspiring to violate any provision or term of
Chapter 6.5, Division 2 of the Business and Professions Code.

7 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,
whether a licensed physician or not, in the performance of or arranging for a
8 violation of any of the provisions of Article 13, Chapter 5, Division 2 of the
Business and Professions Code.

9 (e) Conviction of a crime involving fiscal dishonesty.

10 (f) Any crime or act involving the sale, gift, administration, or furnishing
of "narcotics or dangerous drugs or dangerous devices" as defined in Section
11 4022 of the Business and Professions Code.

12 12. CCR section 2522 states:

13 When considering a) the denial of a license under Section 480 of the
14 Business and Professions Code, b) the suspension or revocation of a license on the
ground that a licensee has been convicted of a crime, or c) a petition for
15 reinstatement of a license under Section 2787.7 of the Business and Professions
Code, the Board in evaluating the rehabilitation of an individual and his or her
16 present eligibility for a license, will consider the following criteria:

17 (1) Nature and severity of the act(s), offense(s), or crime(s) under
consideration.

18 (2) Actual or potential harm to the public.

19 (3) Actual or potential harm to any patient.

20 (4) Overall disciplinary record.

21 (5) Overall criminal actions taken by any federal, state or local agency or
22 court.

23 (6) Prior warnings on record or prior remediation.

24 (7) Number and/or variety of current violations.

25 (8) Mitigation evidence.

26 (9) In case of a criminal conviction, compliance with terms of sentence
and/or court-ordered probation.

27 (10) Time passed since the act(s) or offense(s) occurred.

28 (11) If applicable, evidence of proceedings to dismiss a conviction
pursuant to Penal Code section 1203.4.

(12) Cooperation with the Board and other law enforcement or regulatory
agencies.

(13) Other rehabilitation evidence.

1 **COST RECOVERY**

2 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request
3 the administrative law judge to direct a licensee found to have committed a violation or
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
5 and enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Aug. 10, 2011 Conviction for Driving With BAC .08% or More On Mar. 11, 2011)**

8 14. Respondent has subjected her vocational nurse license to disciplinary action under
9 Code sections 490 and 2878, subdivision (f) in that she was convicted of a crime that is
10 substantially related to the qualifications, functions, and duties of a Licensed Vocational Nurse.
11 The circumstances are as follows:

12 a. On or about August 10, 2011, in a criminal proceeding entitled *The People*
13 *of the State of California vs. Lucina Odell Landa*, in San Diego County Superior Court, Central
14 Courthouse, case number M128513, Respondent was convicted on her plea of guilty of violating
15 Vehicle Code (VC) sections 23152, subdivision (b), driving with a blood alcohol content (BAC)
16 of .08% or more, a misdemeanor. Respondent admitted and the court found true the allegation
17 that pursuant to VC section 23540, within ten years of violating VC section 23152, subdivision
18 (b), mentioned above, on March 5, 2006, she committed a separate violation of VC section
19 23152, subdivision (a), driving under the influence (DUI) of alcohol, a misdemeanor resulting in
20 a conviction on July 24, 2007, in case number S201006, detailed in paragraph 17, below. A
21 charge for violating VC section 23152, subdivision (a), DUI, with similar enhancements was
22 dismissed pursuant to a plea bargain.

23 b. As a result of her conviction, on August 10, 2011, summary probation was
24 granted for five years, and Respondent was sentenced to serve 96 hours under the work release
25 custody of the San Diego County Sheriff. Respondent was ordered to render ten days of public
26 service, with credit for one day served. Respondent was also ordered to pay fines, fees, and
27 restitution, to attend and complete a multiple conviction program and a Mother's Against

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1 Drunk Driving (MADD) Victim's Impact Panel, and comply with the terms of standard DUI
2 probation.

3 c. The facts that led to the conviction are that on or about March 11, 2011,
4 Respondent weaved within her lane while driving along interstate highway I-8 in La Mesa,
5 California. A California Highway Patrol officer noticed Respondent's speed and followed her car
6 to confirm suspected speeding violation. Respondent continued driving at about 70 miles per
7 hour while weaving in her lane and on multiple occasions drifting into other lanes. The officer
8 then activated his emergency lights to initiate an enforcement stop. Upon contact the officer
9 immediately noticed Respondent's watery eyes and slurred speech. The officer also noticed the
10 smell of alcohol emitting from Respondent's breath and from inside her vehicle. Respondent
11 failed to follow instructions while taking the field sobriety tests. Respondent submitted to a
12 preliminary alcohol screening (PAS) test where her breath test results indicated .180 percent and
13 .173 percent BAC. Respondent was thereafter transported to the Las Colinas Women's Detention
14 Facility. There she consented to a blood test, which upon testing was found to have .17 percent
15 BAC.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct - Use Of Alcohol In a Dangerous Manner)**

18 15. Respondent has subjected her vocational nurse license to disciplinary action under
19 Code section 2878.5, subdivision (b), in that on or about March 11, 2011, as described in
20 paragraph 14, above, she used alcoholic beverages to an extent or in a manner that was potentially
21 dangerous and injurious to herself and to others when she operated a motor vehicle while
22 impaired with a significantly high BAC.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct - Conviction Of Alcohol Related Criminal Offenses)**

25 16. Respondent has subjected her vocational nurse license to disciplinary action under
26 Code section 2878.5, subdivision (c), in that on or about August 10, 2011, as described in
27 paragraph 14, above, she was convicted of a criminal offense involving the consumption of
28 alcohol.

DISCIPLINARY CONSIDERATION

17. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant to CCR, section 2522, Complainant alleges:

a. On or about July 24, 2007, in a criminal proceeding entitled *The People of the State of California v. Lucina Odell Landa*, in San Diego County Superior Court, South County Regional Center, case number S201006, Respondent was found guilty by a jury of her peers of violating VC section 23152, subdivision (a), DUI and subdivision (b), driving with a BAC of .08% or more, misdemeanors.

b. As a result of the conviction, on or about August 1, 2008, summary probation was granted for five years as to count 1, but Respondent's sentence as to count 2 was stayed pursuant to PC section 654. Respondent was also ordered to pay fines, fees, and restitution, to attend and complete a first conviction program and a MADD Victim's Impact Panel, and comply with the terms of standard DUI probation.

c. The facts that led to the convictions are that on March 5, 2006, Respondent weaved within her lane while driving along interstate highway I-5 in Chula Vista, California. A California Highway Patrol officer noticed Respondent's manner of driving and followed her car. Respondent was following another vehicle in lane number 4 at an unsafe distance of 15 feet. The other car made a sudden change to lane number 3 and Respondent continued to follow at the same distance. The other car changed back to lane 4 and Respondent likewise changed back to lane 4. The officer then activated his emergency lights to initiate an enforcement stop. Upon contact the officer immediately noticed Respondent's bloodshot watery eyes and the smell of alcohol coming from inside Respondent's vehicle. The officer also noticed Respondent's slow and deliberate movements and unsteady gait. Respondent admitted to drinking beer and as she talked the officer smelled alcohol emitting from her breath and person. Respondent failed the field sobriety tests. Respondent submitted to a preliminary alcohol screening (PAS) test where her breath test results indicated .113 percent and .115 percent BAC. Respondent consented to a breath test, which upon testing was found to have .09 percent and .10 percent BAC.

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PRAYER

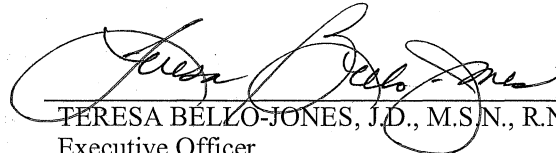
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

1. Revoking or suspending Vocational Nurse License Number VN 234300, issued to Lucina Odell Landa;

2. Ordering Lucina Odell Landa to pay the Board of Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: **JAN 25 2013**



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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